

December 8, 2003

Department of State
CA/OCS/PRI
Adoption Regulations Docket Room SA-29
2201 C Street, NW
Washington, DC 20520

RE: State/AR-01/96
Intercountry Adoption Proposals; Insurance Requirements

Gentlemen:

Our firm, Hess, Egan, Hagerty & L'Hommedieu is a large general insurance agency headquartered in Chevy Chase, Maryland. We are not in the business of adoption in any form but we are interested in the insurance aspects of the Proposed Rules as found in *The Federal Register* 1 Vol. 68, No. 778/Monday, September 15, 2003, Part V, Part C, Subpart B. regarding accredited agencies, providers, etc.

While noting with interest the public's consensus (as reported in the Acton Burnell Public Survey Report) as to the requirement of liability insurance (203(b)(1)(E), I would tend to agree with the consensus to some respects. Liability insurance, conceptually, is intended to protect the insured against economic loss which results from an injury to another for which the insured is liable. As applied to adoptive parents, there is no doubt that it could detrimentally affect the ability to care for any child—birth or adopted.

What should be of greater concern, I believe, are the insurance coverages maintained by the Accrediting Agencies, Temporary Accredited Agencies and "Persons." A large uninsured event/loss could seriously impact the economic stability of the process/system this legislation, in part, is trying to achieve.

*Reference in Subpart "b" is made to a number of coverage types. Specifically:

- General Liability insurance generally protects an injured third party against covered insured perils when the loss was caused by the insured. Coverage amounts are expressed in terms of as per occurrence limit for a single loss and an aggregate limit of coverage for all losses in a policy period.
- A reference is made to the "bonding" of CEO's and CFO's. A distinction needs to be made between the two types of bonds available—fidelity and/or surety.

Fidelity Bonds protect an employer against dishonest acts of employees—i.e., the embezzlement or theft of business/agency funds. What is very often not understood is that owners/officers are specifically excluded from this form of coverage. Established insurance law, in essence, says it would be against public policy to reward a wrongdoer (officer/owner) for this own "wrong doing". Fidelity bond underwriting places a heavy emphasis on internal controls/processes as well as financial wellness.

The Surety Bond on the other hand protects the obligee/beneficiary (often a governmental body) or a prime contractor, i.e., the Department of State or an accrediting agency, against the total failure of the bonded party (obligor) to comply with the underlying regulations/contract. An example of a claim under the surety bond would be the situation of bankruptcy or an owner stealing agency/business assets rendering it unable to comply with the regulations complete the contract. The surety bond process is essentially one of pre-qualification and assumption of risk. The actual underwriting of the bond principal involves many seemingly different variables—demonstrated experience, assessment of corporate and personal financial capacity, indemnity (to the surety) of the business and its owners (husbands and wives); assessment of staffing experience and adequacy—among other underwriting criteria.

In legislation of this type, it is not uncommon to find requirements for both types of bonds. Obviously, it would be wise for accrediting agencies to mandate bond/insurance requirements on its providers so as to protect themselves from exposures to loss over which they would otherwise have little or no direct control.

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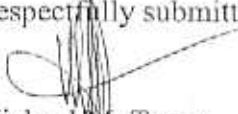
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One important type of coverage not specifically referenced in the proposed regulations is Errors and Omissions (malpractice) coverage. Essentially, it provides coverage for parties injured by unintentional act (or omission) by the insured in the conduct of his agency/business. In today's litigious environment, this coverage is increasingly critical to protect against loss.

There are other types of insurance coverages which are available to the adoption industry. I am reminded again of the Acton Burnell Survey observation concerning the industry's perception of the high cost of insurance. What must be remembered is the extremely high cost of not having the appropriate types/amounts of coverage. Insurance can protect against a crippling or catastrophic loss which can easily impact others in the accountability chain being established by this proposal.

We would welcome the opportunity to discuss the above comments/observations further so as to help make this aspect of the proposal both succinct and viable.

Respectfully submitted,



Michael M. Tracy
Vice President

MMT/emd